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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 1949 (PCB BR 02-01)
RELATING TO: Lottery; Instant Ticket Vending Machines
SPONSOR(S): Committee on Business Regulation
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 9 NAYS 3
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill repeals existing statutory authorization for the Department of the Lottery to sell and dispense instant lottery tickets through instant ticket vending machines. The Department of the Lottery does not presently utilize instant ticket vending machines to sell and dispense instant lottery tickets.

The bill is not expected to have a fiscal impact on state revenue collections or expenditures.

The bill provides that the act will take effect upon becoming a law.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 96-341, Laws of Florida, provided statutory authority for the Department of the Lottery [department] to sell and dispense instant lottery tickets through player-activated vending machines, commonly referred to as instant ticket vending machines [ITVMs], during an 18-month pilot project.

The department was appropriated \$1.1 million for six months of FY 1996-1997 to initiate an 18-month test of up to 500 ITVMs. An additional \$1.2 million appropriation was granted for FY 1997-1998 for months 7 through 18 of the test program. The first ITVM became operational in Florida in January 1997 and by April 1998 all 500 test machines were in service.

In 1998, the Legislature further amended the lottery statutes to remove the remaining obstacles to the continued and/or expanded use of ITVMs by the department.

According to department estimates, for FY 1999-2000, sales from the 797 ITVMs in use generated \$3.1 million in new [gross] revenue¹ from instant ticket sales. However, the department indicates that when program costs, prize payments, retailer commissions, payments to ticket providers, and transfers to education were subtracted, the ITVM program resulted in a loss of revenue of approximately \$2.5 million.²

The 2001 General Appropriations Act appropriated \$2.9 million to fund an extension of the ITVM contract for FY 2001-2002 and to study the financial impact of the ITVM program. This appropriation was vetoed by the Governor, exercising the authority conferred under the provisions of Article III, Section 8, of the Constitution of the State of Florida.

¹ The Lottery Department reports that total ticket sales from ITVMs during FY 1999-2000 were \$22,470,461. A department comparison of sales data from 556 retailers for 12 months prior to and after ITVM installation indicated that average instant ticket sales increased by 4.52% or approximately \$3,901 per retailer. This average increase was extrapolated to each ITVM in use to reach the estimate of total dollar increase [\$3,901 x 797 machines = \$3,109,488].

² Section 24.121, Florida Statutes, establishes the following formula for disbursement of the gross revenue: 50% to be paid out as prizes; 38% to be paid to the Educational Enhancement Trust Fund; and the remaining 12% to cover the operational costs, e.g., retailer commissions, advertising, ticket provider contracts, etc. Department estimates indicate that the ITVM program would need to generate \$64,110,332 [or \$80,439 per machine] in annual sales in order to break even.

C. EFFECT OF PROPOSED CHANGES:

This bill removes all statutory authorization for the use of instant ticket vending machines [ITVMs] by the Department of the Lottery. ITVMs are not presently used by the department to sell or dispense instant lottery tickets to the public.

[See also, C. OTHER COMMENTS: section of bill analysis.]

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends paragraph (a) of subsection (9) of s. 24.105, Florida Statutes, to remove authority for the Department of the Lottery to utilize instant ticket vending machines for the sale of instant lottery tickets.

Section 2. Deletes paragraph (h) of subsection (2) of s. 24.111, Florida Statutes, relating to the lease of instant ticket vending machines and redesignates paragraph (i) as paragraph (h).

Section 3. Repeals s. 24.1055, Florida Statutes, which specified signage requirements for retailers utilizing ITVMs, prohibited the purchase of lottery tickets by persons under 18 years of age, and provided second-degree misdemeanor penalties for violations.³

Section 4. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

³Section 24.116, Florida Statutes, retains language prohibiting a person under the age of 18 from purchasing a lottery ticket and provides a first-degree misdemeanor penalty for a violation that of section. In addition, s. 24.117, Florida Statutes, prohibits the sale of a lottery ticket to a "minor" and establishes a first-degree misdemeanor penalty for a violation.

D. FISCAL COMMENTS:

The 2001 General Appropriations Act appropriated \$2.9 million to fund an extension of the ITVM contract for FY 2001-2002 and to study the financial impact of the ITVM program. The Governor vetoed this appropriation and no ITVMs are in use.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

As a matter of constitutional law and public policy, gambling is generally prohibited in Florida. Article X, Section 7 of the State Constitution prohibits lotteries, other than the types of pari-mutuel pools authorized by general law. A further amendment to the Constitution was adopted in 1986, Article X, Section 15, which authorized state-operated lotteries.

Chapter 849, Florida Statutes, embodies the codification of this general prohibition policy. In addition to specific prohibitions against certain types of gambling, the law also contains restrictions on possession of certain gambling devices for use in those activities.

Concerns over how and by whom Indian gaming operations were to be operated resulted in passage by Congress of the Indian Gaming Regulatory Act [IGRA] in 1988. The IGRA attempted to balance the tribes' sovereignty and the federal and state governments' right to exercise some influence on Indian gaming.

Sections 2701⁴ and 2710(b)⁵ of the IGRA provides that a tribe may only engage in those same type gaming activities as are authorized by law in that state. Hence, if the state authorizes penny-ante

⁴ In articulating Congressional findings, Title 25, Chapter 29, Sec. 2701(5), U. S. Code, reads: "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."

poker, the tribe can, likewise, conduct poker; if the state specifically prohibits wagering on all card games, the tribe cannot conduct wagering on card games. The IGRA separates gaming into three classes of games:

Class I games -- include traditional ceremonial games and social games which may be played for prizes of minimal value;

Class II games -- include bingo and card games explicitly authorized or which are not explicitly prohibited by state law, e.g. penny-ante poker; but does not include banking card games such as blackjack or slot machines,⁶ and

Class III games -- include all other forms of gaming not included in the other two classes, e.g., casino operations.

The State of Florida and the Indian Nations have been in discussions and involved in litigation in both state and federal courts for a number of years with regard to the type of gaming activities that currently take place on Indian properties that the State contends are unlawful, e.g., electronic video lottery machines.

In order for Indian Tribes to be authorized to conduct Class III gambling activities, the IGRA requires that the parties first reach an agreement or "compact" on how the gaming would be conducted. State/tribal compacts must be approved by the Secretary of the Department of the Interior [department]. To date no compact has been negotiated in the State of Florida. Moreover, the Secretary of the Interior recently assumed rulemaking authority to license Indian gaming in the wake of a U.S. Supreme Court case holding unconstitutional a provision of the IGRA allowing the Nations to sue states for not negotiating compacts in good faith. The Attorney General is currently involved in federal litigation challenging the authority of the Secretary of the Interior's rulemaking authority to license Indian gaming.

Although the communication does not constitute a formal administrative action by the department to issue a license, an undated letter issued in late December 2000 or early January 2001 by an acting assistant secretary from the Department of the Interior provided a legal analysis outlining the type of games the department believed were the proper subject matter for compact negotiations in Florida.

In reviewing many of the arguments presented by the Attorney General and the Seminole Tribe, the letter acknowledges the Seminole argument that the instant ticket vending machine [ITVM] used by the Department of the Lottery may be a "gaming device" as defined by s. 849.16, F.S.⁷ and that the statute could be construed to authorize not only the dispensing of paper tickets, but also electronic facsimiles of paper tickets. The Department of the Interior letter states, in part:

⁵ Title 25, Chapter 29, Sec. 2710(b)(1), U. S. Code, provides, in part: "An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law)..."

⁶ See Title 25, Chapter 29, Sec. 2703(7)(B), U. S. Code

⁷ Section 849.16, F.S., provides, in part, that a machine is a slot machine or gaming device if it "... is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable to him...receive[s] or become[s] entitled to receive any piece of money, credit, allowance, or thing of value...which may be exchanged for any money...or secure additional chances or rights to use such machine..."

“We examined the Lottery Act’s provision regarding player-operated machines, Fla. Stat. s. 24.105(10)(a), to determine whether dispensing an electronic facsimile of an “instant lottery ticket” is the legal equivalent of dispensing a paper ticket. Nowhere in the Lottery Act do we find the specific manner in which the player-activated machine must dispense the instant lottery ticket. The State’s position would construe the term “dispense” in a manner which would allow the machine only to expel a paper lottery ticket...Thus, we believe that an electronic facsimile of a ticket can be also dispensed by appearing on a video screen, and then either a paper copy of the winning ticket or a receipt of the winning ticket can be dispensed from the machine to the player to be submitted to the operator for payment, similarly to the manner in which the Florida Lottery instant tickets games are submitted for payment...We see no legal distinction between a machine that “dispenses” electronic facsimiles of instant lottery tickets and ones that dispense papery instant lottery tickets...If the Tribe can find technology that dispenses electronic tickets which appear on a computer screen but are nevertheless stored electronically in a manner similar to the States ITVMs, we can find nothing in Florida law which prohibits electronic tickets as opposed to paper tickets.”

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

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